

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: AFTERMARKET FILTERS ANTITRUST LITIGATION	Master Docket No. 1:08-cv-4883
THIS DOCUMENT RELATES TO:	MDL Docket No. 1957
ALL CASES	Honorable Robert W. Gettleman Magistrate Geraldine Soat Brown

JOINT MOTION FOR RESOLUTION OF DISCOVERY DISPUTES

At the January 10, 2011 status conference, the Court directed the parties to meet and confer regarding the timing of both class- and merits-related depositions, and to present to this Court by motion any issues for which they could not reach agreement by January 26, 2011. The parties have met and conferred as directed, but were unable to reach agreement on three issues: (1) whether plaintiffs may serve additional requests for documents on defendants; (2) the duration of depositions; and (3) the deadlines for written discovery, third party discovery, and all fact discovery. Thus, the parties respectfully move for this Court to resolve these issues as set forth below.

I. BACKGROUND

Consistent with the Court's order on January 10, 2011, the parties conducted extensive meet and confer discussions over the course of two weeks regarding the scheduling of depositions and the completion of the remainder of discovery. The parties have scheduled, or are in the process of scheduling, more than 60 depositions (14 depositions of plaintiffs and 53 depositions of defense witnesses). Beyond those depositions, the parties have agreed to schedule indirect purchaser depositions promptly after the indirect purchaser plaintiffs move to amend their complaint, and the parties have agreed to a schedule for serving notices of, and objections

to, Rule 30(b)(6) deposition notices. The parties have made significant progress in these discussions. We have, however, reached an impasse on three issues, and respectfully request that the Court resolve these disputes. The parties' respective positions on each issue are set forth below.

II. REMAINING ISSUES IN DISPUTE

A. Document Discovery

The parties disagree as to whether all parties, except Plaintiff/Relator William G. Burch,¹ have completed document discovery in this case. It is defendants' position that the Court's September 20, 2010 deadline for the "substantial completion of document production by all parties on both merits and class certification" (Dkt. #460) applied to all documents, and that the Court did not envision that parties would have another opportunity after that date to request additional documents. Plaintiffs served their first set of document requests on defendants on December 10, 2009 and their second set on March 31, 2010. They could have served additional requests at any time prior to the September 20, 2010 deadline, but they chose not to do so. Defendants' position is that the time for serving additional requests for documents has now passed.

Plaintiffs disagree, and propose that they have until the end of the fact discovery period to serve additional requests for documents on defendants. Plaintiffs do not dispute that document discovery is substantially complete. Nonetheless, Plaintiffs believe that the parties should have the opportunity to pursue limited, additional document discovery to address issues that arise during the extensive testimonial discovery that will occur in the coming months.

¹ As set forth in the parties' January 26, 2011 Joint Status Report, the parties agree that Plaintiff/Relator William G. Burch may serve requests for documents that relate specifically to the *qui tam* case on defendants by February 23, 2011.

The parties request that the Court resolve this dispute and clarify whether the September 20, 2010 deadline applied to all document discovery, or whether the parties are permitted to seek additional document discovery until the close of fact discovery.

B. Deadlines for Fact Discovery

Based on Judge Brown's January 10, 2011 Order and Judge Gettleman's comments during the hearing on January 11, 2011, the parties attempted to reach an agreement regarding the schedule for all remaining discovery, including party depositions, third party discovery, interrogatories and requests for admissions. The parties were unable to agree on the deadlines to propose to the Court.

Defendants' position is that all fact discovery, including all party depositions, third party discovery, interrogatories and requests for admission should be completed by September 30, 2011. Plaintiffs would like until December 31, 2011 to complete party depositions. It is plaintiffs' position that the Court should not set a deadline for third party discovery, interrogatories or requests for admission at this time.

C. Duration of Depositions

Given the number of witnesses that will be deposed in this case, the parties agreed that it was important to discuss, and attempt to agree in advance, on the amount of time that each deposition will last. The parties were able to agree that certain depositions of key witnesses are likely to last longer than the seven hours that Rule 30(d) provides for. These witnesses include John Evans, Mark McDaniel, Ty Nilsson, Al Tobin, and Marlen Silverii, and the parties have agreed to meet and confer in advance of each of their depositions to attempt in good faith to agree upon the amount of time that will be required for each. However, the parties were not able to reach an agreement on the duration of the remaining depositions.

Defendants' position is that each deposition should last seven hours total. Because defendants intend to cross-notice all defense witnesses, defendants may need some portion of that time for their examinations of those witnesses. Thus, defendants propose that, if both plaintiffs and defendants notice a defense witness's deposition, plaintiffs collectively will have up to five hours to depose that witness, and defendants collectively will have up to two hours to depose that witness. In the case of depositions of plaintiff witnesses, if both plaintiffs and defendants notice a witness's deposition, defendants propose that defendants collectively will have five hours and plaintiffs collectively will have two hours. Defendants' proposal applies to all witnesses, including Rule 30(b)(1) witness who have been designated to address Rule 30(b)(6) topics.

Plaintiffs' position is that they are entitled under the Federal Rules to seven hours for each deposition that they have noticed and that they should have the full amount of time for each witness. In the event that a Rule 30(b)(1) witness is designated to address Rule 30(b)(6) topics, it is plaintiffs' position that the parties should meet and confer to discuss whether additional time is necessary. To the extent that defendants want to examine a witness, it is plaintiffs' position that any examination by defendants must be in addition to plaintiffs' seven hour allotment, but plaintiffs take no position on the amount of time that should be allotted to defendants, as long as it is seven hours or less.

III. CONCLUSION

WHEREFORE defendants respectfully request that the Court enter Defendants' Proposed Order Regarding Discovery. Plaintiffs respectfully request that the Court enter Plaintiffs' Proposed Order Regarding Discovery.

Dated: January 26, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marguerite M. Sullivan, hereby certify that on January 26, 2011, I caused the foregoing Joint Motion for Resolution of Discovery Disputes to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties indicated on the electronic filing receipt. I also caused the foregoing Joint Motion for Resolution of Discovery Disputes to be served on the following individual via electronic mail:

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